

ESTTA Tracking number: **ESTTA703305**

Filing date: **10/20/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91224276
Party	Defendant Gristmill Distillers, Inc.
Correspondence Address	Luke Brean BreanLaw, LLC P.O. Box 4120 ECM #72065 Portland, OR 97208  tmsupport@breanlaw.com
Submission	Answer
Filer's Name	Jackson MacDonald
Filer's e-mail	tmsupport@breanlaw.com
Signature	/JMD/
Date	10/20/2015
Attachments	OPP-ApplicantsAnswer -- 86503734.pdf(616237 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of: U.S. Serial No. 86503734  
Date of filing: Jan. 14, 2015  
Mark: BLACKFLY BOURBON  
Date of Publication: Sep. 22, 2015

---

FIREFLY DISTILLING COMPANY LLC  
Opposer,

v.

GRISTMILL DISTILLERS, INC.  
Applicant.

---

Opposition No.: 91224276

Mark: BLACKFLY BOURBON

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION**

Applicant, Gristmill Distillers, Inc. (“Applicant”), for its Answer to the Notice of Opposition filed by Firefly Distilling Company LLC (“Opposer”) against application for registration of Applicant's trademark BLACKFLY BOURBON, serial number 86503734, filed Jan. 14, 2015 and published in the Official Gazette of Sep. 22, 2015, pleads and avers as follows:

1. Applicant is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 1 and accordingly denies the allegations therein.
2. Applicant is without sufficient knowledge or information to form a belief as to the allegations

contained in Paragraph 2 regarding Opposer's use of its marks and accordingly denies the allegations therein; The remaining allegations in this paragraph are legal conclusions or a statement of opinion to which no response is required, but to the extent the allegations constitute factual allegations, Applicant denies them.

3. Applicant admits that it filed an application for registration of the mark BLACKFLY BOURBON on January 14, 2015, but denies the allegation that such application was filed on an intent-to-use basis.
4. Denied.
5. The allegations in this paragraph are legal conclusions or a statement of opinion to which no response is required. To the extent the allegations constitute factual allegations, Applicant denies them.
6. The allegations in this paragraph are legal conclusions or a statement of opinion to which no response is required. To the extent the allegations constitute factual allegations, Applicant denies them.
7. The allegations in this paragraph are legal conclusions or a statement of opinion to which no response is required. To the extent the allegations constitute factual allegations, Applicant denies them.
8. Applicant admits that the identification of goods in its application for BLACKFLY BOURBON contains no restrictions or limitations; The remainder of the allegations in this paragraph are legal conclusions or a statement of opinion to which no response is required, but to the extent the allegations constitute factual allegations, Applicant denies them.
9. The allegations in this paragraph are legal conclusions or a statement of opinion to which no response is required. To the extent the allegations constitute factual allegations, Applicant denies them.

10. The allegations in this paragraph are legal conclusions or a statement of opinion to which no response is required. To the extent the allegations constitute factual allegations, Applicant denies them.
11. The allegations in this paragraph are legal conclusions or a statement of opinion to which no response is required. To the extent the allegations constitute factual allegations, Applicant denies them.
12. Applicant admits the portion of the allegation that Applicant's Mark would give Applicant *prima facie* evidence of the validity and ownership of Applicant's Mark and of Applicant's exclusive right to use Applicant's Mark; Applicant denies that such result will be to the detriment of Opposer.
13. Denied.

#### **AFFIRMATIVE DEFENSES**

14. The Opposition fails to state a claim upon which relief can be granted and accordingly must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).
15. The marks at issue are so dissimilar that likelihood of confusion cannot be found as a matter of law, thus dismissal is proper under Fed. R. Civ. P. 12(b)(6).
16. There is no likelihood of confusion, mistake or deception because, inter alia, Applicant's mark and the pleaded marks of Opposer are not confusingly similar. The only possible similarity between the marks is the presence in Applicant's mark and most of Opposer's marks of the letters "FLY". However, FLY is presented in all relevant marks as part of a larger word, namely BLACKFLY in Applicant's mark and FIREFLY in Opposer's marks. When that obvious distinction is combined with the fact that Opposer's stylized marks also include design elements that are wholly dissimilar from anything present in Applicant's mark such that Applicant's mark

is not similar in sight, sound, meaning or commercial impression to Opposer's pleaded marks.

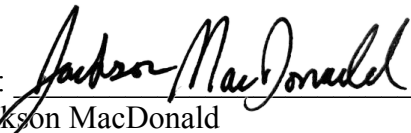
17. Upon information and belief, Opposer has failed to protect and police its trademark rights in the cited registrations and marks resulting in abandonment of its trademark rights.

18. Opposer will not be damaged by the registration of Applicant's trademark.

In view of the foregoing, Applicant contends that this opposition is groundless and baseless in fact; that Opposer has not shown wherein it will be, or is likely to be, damaged by the registration of Applicant's trademark; that Applicant's trademark is manifestly distinct from any alleged mark of the Opposer or any designation of the Opposer and Applicant prays that this Opposition be dismissed and that Applicant be granted registration of its trademark.

Dated: October 20, 2015

Respectfully submitted,

By: 

Jackson MacDonald  
BreanLaw, LLC

P.O. Box 4120

ECM #72065

Portland, Oregon 97208

800-451-5815

[Jackson@breanlaw.com](mailto:Jackson@breanlaw.com)

[tmsupport@breanlaw.com](mailto:tmsupport@breanlaw.com)

Attorneys for Applicant

## **CERTIFICATE OF SERVICE**

This is to certify that a copy of this APPLICANT'S ANSWER TO NOTICE OF OPPOSITION, is being deposited with the U.S. Postal Service on October 20, 2015 by first-class mail, postage prepaid to the counsel of record in an envelope addressed as follows:

Thomas M. Hadid  
Cooley LLP  
1299 Pennsylvania Ave. NW, Suite 700  
Washington, DC 20004  
UNITED STATES

/JMD/  
Jackson MacDonald

BreanLaw, LLC  
P.O. Box 4120  
ECM #72065  
Portland, Oregon 97208

[Jackson@breanlaw.com](mailto:Jackson@breanlaw.com)  
800-451-5815

Attorney for Applicant